




TRANSMITTAL OF APPEAL BRIEF			Docket No. 20107/1200838-US1
In re Application of: Earl Rotman et al.			
Application No. 10/709,329-Conf. #3328	Filing Date April 28, 2004	Examiner N. B. Nguyen	Group Art Unit 3628
Invention: SYSTEM AND METHOD FOR CREATING TRADEABLE FINANCIAL UNITS			
<p style="text-align: center;"><b><u>TO THE COMMISSIONER OF PATENTS:</u></b></p> <p>Transmitted herewith is the Appeal Brief in this application, with respect to the Notice of Appeal filed: <u>August 11, 2005</u> .</p> <p>The fee for filing this Appeal Brief is <u>\$ 500.00</u> .</p> <p><input checked="" type="checkbox"/> Large Entity      <input type="checkbox"/> Small Entity</p> <p><input type="checkbox"/> A petition for extension of time is also enclosed.</p> <p>The fee for the extension of time is _____ .</p> <p><input checked="" type="checkbox"/> A check in the amount of <u>\$ 500.00</u> is enclosed.</p> <p><input type="checkbox"/> Charge the amount of the fee to Deposit Account No. <u>04-0100</u> . This sheet is submitted in duplicate.</p> <p><input type="checkbox"/> Payment by credit card. Form PTO-2038 is attached.</p> <p><input checked="" type="checkbox"/> The Director is hereby authorized to charge any additional fees that may be required or credit any overpayment to Deposit Account No. <u>04-0100</u> . This sheet is submitted in duplicate.</p> <div style="display: flex; justify-content: space-between; align-items: flex-end;"><div> _____ Richard J. Katz Attorney Reg. No. : 47,698 DARBY &amp; DARBY P.C. P.O. Box 5257 New York, New York 10150-5257 (212) 527-7700</div><div>Dated: <u>June 30, 2006</u></div></div>			



Application No. (if known): 10/709,329

Attorney Docket No.: 20107/1200838-US1

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Fee Transmittal (1 page)  
Appeal Brief Transmittal (1 page)  
Appellants' Brief on Appeal Under 37 C.F.R. §41.37 (25 pages, triplicate copies)  
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**FEE TRANSMITTAL**  
**For FY 2006**☐

Applicant claims small entity status. See 37 CFR 1.27

**TOTAL AMOUNT OF PAYMENT**

(\$) 500.00

**Complete if Known**

Application Number	10/709,329-Conf. #3328
Filing Date	April 28, 2004
First Named Inventor	Earl Rotman
Examiner Name	N. B. Nguyen
Art Unit	3628
Attorney Docket No.	20107/1200838-US1

**METHOD OF PAYMENT** (check all that apply)

☒ Check ☐ Credit Card ☐ Money Order ☐ None ☐ Other (please identify): \_\_\_\_\_

☐ Deposit Account Deposit Account Number: 04-0100 Deposit Account Name: Darby & Darby P.C.

For the above-identified deposit account, the Director is hereby authorized to: (check all that apply)

☐ Charge fee(s) indicated below ☐ Charge fee(s) indicated below, except for the filing fee

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**FEE CALCULATION** (All the fees below are due upon filing or may be subject to a surcharge.)**1. BASIC FILING, SEARCH, AND EXAMINATION FEES**

Application Type	FILING FEES		SEARCH FEES		EXAMINATION FEES		Fees Paid (\$)
	Fee (\$)	Small Entity Fee (\$)	Fee (\$)	Small Entity Fee (\$)	Fee (\$)	Small Entity Fee (\$)	
Utility	300	150	500	250	200	100	
Design	200	100	100	50	130	65	
Plant	200	100	300	150	160	80	
Reissue	300	150	500	250	600	300	
Provisional	200	100	0	0	0	0	

**2. EXCESS CLAIM FEES****Fee Description**

	Fee (\$)	Small Entity Fee (\$)
Each claim over 20 (including Reissues)	50	25
Each independent claim over 3 (including Reissues)	200	100
Multiple dependent claims	360	180

**Total Claims**      **Extra Claims**      **Fee (\$)**      **Fee Paid (\$)**

\_\_\_\_\_ - = \_\_\_\_\_ x \_\_\_\_\_ = \_\_\_\_\_

HP = highest number of total claims paid for, if greater than 20.

**Indep. Claims**      **Extra Claims**      **Fee (\$)**      **Fee Paid (\$)**

\_\_\_\_\_ - = \_\_\_\_\_ x \_\_\_\_\_ = \_\_\_\_\_

HP = highest number of independent claims paid for, if greater than 3.

**Multiple Dependent Claims**

**Fee (\$)**      **Fee Paid (\$)**

\_\_\_\_\_      \_\_\_\_\_

\_\_\_\_\_      \_\_\_\_\_

**3. APPLICATION SIZE FEE**

If the specification and drawings exceed 100 sheets of paper (excluding electronically filed sequence or computer listings under 37 CFR 1.52(e)), the application size fee due is \$250 (\$125 for small entity) for each additional 50 sheets or fraction thereof. See 35 U.S.C. 41(a)(1)(G) and 37 CFR 1.16(s).

**Total Sheets**      **Extra Sheets**      **Number of each additional 50 or fraction thereof**      **Fee (\$)**      **Fee Paid (\$)**

\_\_\_\_\_ - 100 = \_\_\_\_\_ /50 \_\_\_\_\_ (round up to a whole number) x \_\_\_\_\_ = \_\_\_\_\_

**4. OTHER FEE(S)**

Non-English Specification, \$130 fee (no small entity discount)

Other (e.g., late filing surcharge): 1402 Filing a brief in support of an appeal

**Fees Paid (\$)**

500.00

**SUBMITTED BY**

Signature		Registration No. (Attorney/Agent)	47,698	Telephone	(212) 527-7700
Name (Print/Type)	Richard J. Katz	Date	June 30, 2006		

**Dated:** \_\_\_\_\_

A circular black and white stamp. The text "OIPET &amp; TRADEMARK OFFICE" is curved along the top inner edge. "IAP&amp;A" is curved along the bottom inner edge. In the center, the date "JUN 30 2006" is printed horizontally. Below the date, the words "In Office" are partially visible, with "In" and "Office" clearly legible.

In application of: Earl ROTMAN et al.

Serial No.: 10/709,329

Group Art Unit: 3628

Filed: April 28, 2004

Examiner: Nga B. Nguyen

For: SYSTEM AND METHOD FOR CREATING TRADEABLE FINANCIAL UNITS

MS Appeal Brief - Patents  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

07/05/2006 CCHAU1 00000094 10709329

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Dear Sir:

Appellants submit this brief in accordance with 37 C.F.R. § 41.37 in support of their appeal from the Office Action, mailed January 17, 2006 by Examiner Nga B. Nguyen, and the Notice of Panel Decision from Pre-Appeal Brief Review, mailed June 2, 2006, in the above-identified patent application.

The present application has been granted special status (See, Decision on Petition to Make Special, mailed June 18, 2004). Additionally, the present application is participating in the Pre-First Office Action Interview Program announced March 31, 2004. Accordingly, Appellants request accelerated treatment of this brief.

In accordance with the Pre-Appeal Brief Conference Program, “the period of time for filing the appeal brief will be the later of the two-month period set in 37 C.F.R. § 41.37(a) or one month from the mail date of the decision on the request.” *See* USPTO OG Notice: July 13, 2005. Therefore, Appellants submit that this Appeal Brief is timely filed, and requires no extension of time fees. However, the Commissioner is hereby authorized to charge any unpaid fees deemed



4. Claims allowed: none;

5. Claims rejected: 1-74.

Claims 1-74 stand rejected under 35 U.S.C. § 101 as being directed to non-statutory subject matter.

The claims on appeal are claims 1-74.

For the purpose of the present appeal, Appellants request that article claims 1-18, 30-49, 61-62 and 73-74 be considered to form a first group. Appellants further request that method claims 19-29, 50-60 and 63-72 be considered to form a second group.

#### IV. STATUS OF AMENDMENTS

No amendments have been filed subsequent to the January 17, 2006 Office Action.

#### V. SUMMARY OF CLAIMED SUBJECT MATTER

The claimed invention is directed to a system and method relating to offerings of securities in a company. The claimed article relates to a financial instrument suitable for trade as a unit, where the unit represents both ownership of an equity share of a company and ownership of a debt of the company. (Specification page 9, lines 20-22, Figs. 1, 3; 6, and 7.) The unit represents both equity and debt of a company in a prescribed way according to a predetermined ratio. The claimed article can also include additional features making the unit suitable for a subsequent offering by the company. (Specification page 22, line 19 through page 23, line 6, Figs. 2 and 7.) The method claims recite steps which create the article suitable for trading as a unit. Method claims also recite steps which decompose the article suitable for trading into its constituent components. (Specification page 25, line 18 through page 26, line 4, Fig. 4.)

A company offers the unit to potential holders (i.e., investors) who then have simultaneously a direct ownership interest in the equity of the company and a direct ownership

interest in the debt of the company. The holders can receive dividend revenue from their equity ownership and interest revenue from their debt ownership.

## VI. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

1) Whether article claims 1-18, 30-49, 61-62 and 73-74 can properly be rejected as non-statutory subject matter under 35 U.S.C. § 101 in light of the Federal Circuit's jurisprudence of what constitutes statutory subject matter.

2) Whether method claims 19-29, 50-60 and 63-72, which recite steps producing a concrete, tangible and useful result, can be properly rejected as non-statutory subject matter under 35 U.S.C. § 101.

## VII. ARGUMENT

**There is No “Separate ‘Technological Arts’ Test To Determine Patent Eligible Subject Matter Under § 101.” *See Exparte Lundgren*, Appeal No. 2003-2088 (BPAI 2005)**

The Examiner has improperly rejected claims 1-74 for not having “practical application in the technological arts.” (January 17, 2006 Office Action, item 5, page 4.) The Specification and Remarks of record (see December 3, 2004 Response to Office Action, pages 20-26) establish numerous examples of statements of practical application. For instance: the invention provides a structure for owners of privately held companies to raise capital through a public offering. (Specification, page 10, lines 20-24.) Thus, allowing companies with low growth rates, but stable and predictable streams of revenue, to raise capital through initial public offerings. The yield generated can be engineered to return a desired return on capital. (Specification, page 6, lines 19-20.) The article is available for purchase by the investing public. Holders of the article get one security but can receive two streams of revenue: a dividend payment from the equity portion, and interest payments from the subordinated debt portion. The company is able to prudently distribute



nearly all its free cash flow to the holders of the claimed invention in the form of interest and dividend payments. (Specification, page 11, lines 19-20.) Holders of the claimed invention retain direct ownership interest in the equity and debt represented by the tradeable units, which is a distinguishing feature over the conventional financial units previously available in the art. (Specification page 15, lines 20-22.)

MPEP § 2106, Examination Guidelines for Computer Related Inventions (“Guidelines”), instructs that during examination the Examiner should point out statements made in the Specification that identify all practical applications for the invention, and that the Examiner should rely on such statements throughout the examination. MPEP page 2100-6. Further, the Guidelines instruct the Examiner that “only one [practical application] is necessary to satisfy the utility requirement.”

The Examiner errs in relying on a “separate technological arts” requirement and in failing to recognize that all of the pending claims satisfy the requirements of 35 U.S.C. § 101. Claims 1-74 satisfy the actual, existing Guidelines for statutory subject matter, and withdrawal of the rejection is appropriate for this reason alone.

#### Grounds of Rejection No. 1

##### **The Article Claims Represent a New Form of Capital Structure That Comports With the Federal Circuit’s Jurisprudence For a Concrete, Tangible and Useful Result.**

Claims 1-18, 30-49, 61-62 and 73-74 are within the Federal Circuit’s jurisprudence of what constitutes statutory subject matter. These claims are directed to “an article suitable for trade.” The article recited in these claims is a new form of a capital structure for a company, representing equity and subordinated debt in a predetermined ratio as a tradeable unit. The structure of the claimed article suitable for trade is necessarily a transformation or reduction to a different state or thing because the claimed structure has a separate identity from the underlying equity and debt.





Poors (“S&P”), a rating agency known for its expertise in evaluating and analyzing financially related subject matter, stated that:

“Essentially, the debt and equity replaced by [the claimed article], is not equal to the debt and equity that make up the [claimed article] . . . .”

(*S&P says Income Securities Hurt Credit Quality*, Liz Rappaport, Dow Jones Newswire, April 28, 2004.) This article was cited by Applicants to the Examiner in an Information Disclosure Statement submitted July 15, 2004. Unequivocally, S&P concludes that the claimed unit is not simply an aggregation of equity and debt. Rather, S&P concludes the claimed unit necessarily is a transformation of the component parts.

The claimed article has been approved by the U.S. Securities and Exchange Commission and is actually traded on the American Stock Exchange under the symbol “CVP.” Thus, the transformation of equity and subordinated debt as represented by the tradeable unit results in a claimed article which is “accepted and relied on by regulatory authorities and in subsequent trades.” *State Street Bank & Trust Co. v. Signature Financial*, 149 F.3d 1368, 1373 (Fed. Cir. 1998).

For the foregoing reasons, the article claims in this first group not only have demonstrated practical application in the relevant art, but satisfy the Federal Circuit's decisional law as to what constitutes statutory subject matter in reciting an article having a useful concrete, and tangible result. The Examiner has erred in rejecting this group of claims under § 101.

## Grounds of Rejection No. 2

**Method Claims Reciting Steps Producing a Concrete, Tangible and Useful Result are Statutory Subject Matter Independent of Any Technological Art**

A process claim is statutory if it “produces a concrete, tangible and useful result; i.e., the method recites a step or act of producing something that is concrete, tangible and useful.” *See* MPEP, pages 2100-18. The methods in the claims in the second group on appeal transform or reduce the equity and subordinated debt in the tradeable unit to a different state or thing when creating the claimed article suitable for trade. Selected examples of the concrete, tangible and useful results that are recited in the pending method claims 19-29, 50-60 and 63-72 are “offering the unit for purchase and sale,” “offering the second unit for purchase and sale,” and “effecting the transfer of ownership of at least one of the equity and debt.” None of the foregoing would be possible but for the creation of the claimed tradeable unit.

Paraphrasing the holding in *State Street Bank* with regard to the instant facts illuminates the legal basis for the Board to conclude that the method claims in the second group satisfy Section 101:

[T]he transformation of data, representing [equity and subordinated debt], by a machine through a series of mathematical calculations into a [tradeable unit], constitutes a practical application of a mathematical algorithm, formula, or calculation because it produces “a useful, concrete and tangible result” — a final [unit] price momentarily fixed for recording and reporting purposes and even accepted and relied upon by regulatory authorities and in subsequent trades [i.e., purchase and sale].

*State Street Bank & Trust Co. v. Signature Financial*, 149 F.3d 1368, 1373 (Fed. Cir. 1998), which is cited with approval by the MPEP Guidelines

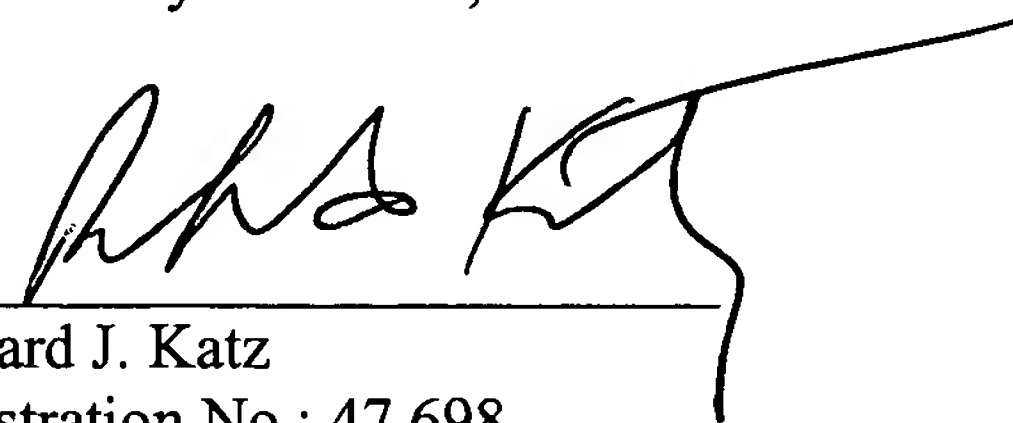
Using claim 19 as an example with respect to the process claims of the application, it is clear that it produces a useful, concrete and tangible result, i.e., “offering the unit for purchase and sale.” If anything, this result is more useful, concrete and tangible than the final share price of *State Street*, because it calls for the actual trading of the share. The result of claim 23 is “offering the second unit for purchase and sale.” Claim 28 results in “effecting the transfer of ownership of at least one of the equity and debt.” Further, it is clear that at least a portion of the invention is carried out in a computer. *See*, Specification page 4, line 11 (software reference); Specification page 14, lines 9-15 (electronic files, a computer database and electronic book-entry changes).

The Examiner contends that patent protection is limited “to inventions that posses[] a certain level of ‘real world’ value, as opposed to subject matter that represents nothing more than an idea or concept, or is simply a starting point for future investigation.” Appellants agree, and submit that the claimed methods have a “real world” value.<sup>1</sup> The claimed methods are more than an idea or concept and are not simply a starting point for future investigations. These methods, as demonstrated above, transform or reduce equity and debt into a different capital structure. This capital structure is a unit suitable for trade, and in fact exists and is traded in the marketplace.

For all of the reasons set forth above, the rejections of claims 1-74 should be reversed. Appellants respectfully request that the application be remanded to the Primary Examiner with an instruction to withdraw the 35 U.S.C. § 101 rejection. Because all prior art rejections made by the Examiner have been overcome by the Appellants and withdrawn by the Examiner, Appellants respectfully request that the Primary Examiner also be instructed to pass the case to allowance.

Respectfully submitted,

By



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Dated: June 30, 2006

## APPENDIXES

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<sup>1</sup> Appellants respectfully note that the U.S. Patent and Trademark Office should take Official Notice of its own actions with respect to method claims in the financial sector. In a June 21, 2006 announcement on its website, the U.S. Patent and Trademark Office provided a Listing of US Patent Grant and US Pre-Grant Publication Documents Classified in US Patent Classification 705/36T. This new classification contains patents directed to Tax Strategies, with a result that has no physical matter produced.



7. (Previously Presented) An article suitable for trade as a unit in a subsequent offering, comprising:

one or more equity shares in a company which is capable of paying dividends;

a first debt of the company which is interest bearing at a particular rate until a particular maturity date;

a second debt of the company which is interest bearing at the particular rate until the particular maturity date; and

said first and second debts and the equity shares being represented by the unit in a prescribed way according to a predetermined ratio;

wherein the unit provides direct ownership of said first and second debts and the equity shares.

8. (Original) The article of claim 7, wherein one of the first debt and the second debt is included in the unit at one of a par value, an original issue discount, and an original issue premium.

9. (Original) The article of claim 7, wherein the subsequent offering is for a quantity of units and wherein the second debt has an aggregate principal value within the unit which is in proportion to the quantity of units in the subsequent offering.

10. (Original) The article of claim 7, wherein the first debt and the second debt are represented by a joint identifying reference associated with a sub-unit.

11. (Previously Presented) The article of claim 10, wherein the equity shares and the sub-unit are represented by a second joint identifying reference associated with the unit.







23. (Original) A method of establishing an article suitable for trade as a unit in a subsequent offering by a company, where a prior offering established a first unit representing equity shares and debt in a predetermined ratio, comprising the steps of:

defining a capital structure for a second unit which includes additional equity shares in the company and additional debt of the company according to the predetermined ratio;

submitting a request to register the additional equity shares and the additional debt for the subsequent offering by the company;

recalling the first unit, the first unit comprising equity shares in the company and debt of the company in the predetermined ratio as its constituent components;

requesting the disassociation of the constituent components represented by the first unit;

requesting the association of the constituent components together with the registered additional equity shares and the additional debt in a prescribed way according to the predetermined ratio;

depositing the constituent components together with the registered additional equity shares and the additional debt under a single, unique second number suitable for facilitating the clearing and settlement of any purchases and sales of a second unit; and

offering the second unit for purchase and sale.

24. (Original) The method of claim 23, wherein one of the first debt and the second debt is included in the unit at one of a par value, an original issue discount, and an original issue premium value.

25. (Original) The method of claim 23, wherein the offering step comprises a public offering.

26. (Original) The method of claim 23, wherein the first number and the second number are the same unique number.

27. (Original) The method of claim 23, wherein the subsequent offering is made free of any trust certificate(s).

28. (Original) A method of marketing constituent components of an article that is traded as a unit, comprising the steps of:

obtaining dominion over the unit from a holder of the unit, wherein a unique identifying reference number is associated with the unit which jointly represents equity and debt of the company as its constituent components;

separating the unit into the constituent components of equity and debt; and

effecting the transfer of ownership of at least one of the equity and debt.

29. (Previously Presented) The method of claim 28, wherein the debt is a subordinated debt.

30. (Original) An article suitable for trade as a unit, useful in a subsequent offering by a company, comprising:

a quantity of equity shares in the company which is capable of paying dividends;

a first amount of debt of the company which is interest bearing at a particular rate until a particular maturity date;

a second amount of debt of the company which is interest bearing at the particular rate until the particular maturity date;







43. (Previously Presented) The article of claim 42, wherein the second joint identifying reference has a unique number associated therewith to facilitate clearing and settlement of purchases and sales of the unit.

44. (Previously Presented) The article of claim 41, wherein the first and the second debts and the sub-unit each have a respective CUSIP number and wherein the unit has a CUSIP number that is different than the respective CUSIP numbers.

45. (Previously Presented) The article of claim 38, wherein the first and second debts each comprise at least one instrument selected from the group consisting of: a note, a bond, a promissory note, an interest bearing obligation, and a debenture; and

wherein the equity shares comprises at least one instrument selected from the group consisting of: common stock, preferred stock, and an ownership interest in the company.

46. (Previously Presented) The article of claim 38, wherein the unit provides direct ownership of the equity shares and the debt free of any trust certificate(s).

47. (Previously Presented) The article of claim 38, wherein at least one of the first debt and the second debt comprises a subordinated debt.

48. (Previously Presented) An article suitable for trade as a unit, comprising:  
at least one computer database record containing a software reference associating a single, unique number suitable for facilitating the clearing and settlement of any purchases and sales of the unit with (a) a quantity of equity shares in a company which is capable of paying dividends, and (b) an amount of debt of the company which is interest bearing at a particular rate until a





56. (Previously Presented) The method of claim 54, wherein the offering step comprises a public offering.

57. (Previously Presented) The method of claim 54, wherein the first number and the second number are the same unique number.

58. (Previously Presented) The method of claim 54, wherein the subsequent offering is made free of any trust certificate(s).

59. (Previously Presented) A method, operable on a computer-based network, of marketing constituent components of an article that is traded as a unit, wherein the computer-based network includes a plurality of network-connected computers and a database, the method comprising the steps of:

obtaining dominion over the unit from a holder of the unit, wherein a unique identifying reference number is associated with the unit in the database which jointly represents equity and debt of the company as its constituent components;

separating the unit into the constituent components of equity and debt; and

effecting the transfer of ownership of at least one of the equity and debt using at least one of said computers.

60. (Previously Presented) The method of claim 59, wherein the debt is a subordinated debt.

61. (Previously Presented) An article suitable for trade as a unit, useful in a subsequent offering by a company, comprising:

at least one database record containing a software reference associating a quantity of equity shares in the company which is capable of paying dividends, a first amount of debt of the company which is interest bearing at a particular rate until a particular maturity date, and a second

amount of debt of the company which is interest bearing at the particular rate until the particular maturity date; the database record representing the associated equity shares and the first and the second debts in a predetermined ratio with a single, unique number suitable for facilitating the clearing and settlement of any purchases and sales of the unit; and wherein the database record includes an entry identifying a registered holder of the unit.

62. (Previously Presented) The article of claim 61, wherein the unit provides direct ownership of the equity shares and the first and second debts free of any trust certificate(s).

63. (Previously Presented) A method of offering for trade a unit representing an ownership interest in the capital structure of a company, comprising the steps of:

creating new debt and equity in the company;

representing the debt and equity together in a prescribed way according to a predetermined ratio to form a tradeable unit; and

offering the tradeable unit for purchase and sale.

64. (Previously Presented) The method of claim 63, further including the step of registering the debt and equity with a regulatory agency.

65 (Previously Presented) The method of claim 64, further including the step of registering the unit with the regulatory agency.

66. (Previously Presented) The method of claim 63, further including the step of associating the unit with a single, unique number prior to the step of offering the unit, said number being suitable for facilitating the clearing and settlement of any purchases and sales of the unit.





## EVIDENCE APPENDIX

**All evidence is in the record.**

**RELATED PROCEEDINGS APPENDIX**

There are no related proceedings for this matter.